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OS REGISTRY

OS-1267X-87

100TH CONGRESS
1ST SESSION

H. R. 1536

To amend the Fair Labor Standards Act to prevent the denial of employment opportunities by prohibiting the use of polygraph examinations by employers involved in or affecting interstate commerce unless the examination is made in accordance with certain minimum standards and to encourage the States and local governments to establish regulations for the administration of polygraph examinations.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1987

Mr. YOUNG of Florida (for himself, Mr. DARDEN, Mr. LAGOMARSINO, Mr. ROBERTS, Mr. SWINDALL, Mr. IRELAND, Mr. LIVINGSTON, Mrs. VUCANOVICH, Mr. DANNEMEYER, and Mr. THOMAS of Georgia) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Fair Labor Standards Act to prevent the denial of employment opportunities by prohibiting the use of polygraph examinations by employers involved in or affecting interstate commerce unless the examination is made in accordance with certain minimum standards and to encourage the States and local governments to establish regulations for the administration of polygraph examinations.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*

SHORT TITLE

2 SECTION 1. This act may be cited as the "Polygraph
3 Reform Act of 1987".

POLYGRAPH EXAMINATIONS

5 SEC. 2. The Fair Labor Standards Act of 1938 (29
6 U.S.C. et seq.) is amended—

7 (1) by inserting above the heading of Section 2
8 the following:

9 "TITLE I—FAIR LABOR STANDARDS";

10 (2) by striking out “this Act” each place it ap-
11 pears (other than in the first section) and inserting in
12 lieu thereof “this title”; and

13 (3) by adding at the end thereof the following new
14 title:

15 "TITLE II—POLYGRAPH EXAMINATIONS

16 "LIMITATIONS ON THE USE OF POLYGRAPH

17 EXAMINATIONS

18 “SEC. 201. (a) Unless the examination is given in ac-
19 cordance with section 202, no employer or any other person
20 engaged in or affecting commerce, nor any agent or repre-
21 sentative thereof may—

22 “(1) directly or indirectly require, request, sug-
23 gest, permit, or cause any employee, agent, prospective
24 employee, or prospective agent to take or submit to any
25 polygraph examination for any purpose; or

1 “(2) use, accept, or refer to the results of any
2 polygraph examination of any employee, agent, pro-
3 spective employee, or prospective agent for any
4 purpose.

5 “(b) No employer may discharge, dismiss, discipline, or
6 deny employment or promotion to; or threaten to discharge,
7 dismiss, discipline, or deny employment or promotion to any
8 employee, agent, prospective employee, or prospective agent
9 who refuses, declines, or fails to take or submit to any poly-
10 graph examination.

11 “(c) No employer may discharge, dismiss, discipline, or
12 deny employment or promotion to; or threaten to discharge,
13 dismiss, discipline, or deny employment or promotion to; an
14 employee or applicant based solely on the opinions or conclu-
15 sions of a polygraph examiner reached by analysis of the re-
16 sults of a polygraph examination of the employee or applicant
17 for employment given in accordance with section 202. If a
18 polygraph examiner concludes, based on an analysis of the
19 results of a polygraph examination given in accordance with
20 section 202, that an employee or applicant for employment
21 was deceptive, the employee or applicant for employment
22 must be provided an opportunity to rebut such conclusion.

23 “MINIMUM STANDARDS FOR CONDUCTING POLYGRAPH

24 EXAMINATIONS

25 “SEC. 202. (a) The Secretary shall establish standards
26 of conduct and qualifications for persons who wish to conduct

1 polygraph examinations. The standards shall include the re-
2 quirements set forth in subsections (b) through (k).

3 “(b) Subject to subsection (c), no polygraph examination
4 shall be conducted by an individual unless the individual—

5 “(1) is at least twenty one years of age;

6 “(2) is a citizen of the United States;

7 “(3) is a person of good moral character;

8 “(4) has complied with all required laws, rules,
9 and regulations established by the Secretary and other
10 polygraph licensing and regulatory authorities in the
11 state in which the examination is to be conducted; and

12 “(5)(A) has successfully completed a formal train-
13 ing course regarding the use of polygraphs that has
14 been approved under (4) above or by the Secretary;
15 and

16 “(B) has completed a polygraph examiner intern-
17 ship of at least six months in duration under the direct
18 supervision of a polygraph examiner who has met the
19 requirements of this section.

20 “(c) The Secretary shall establish standards governing
21 individuals who on the date of enactment of the Polygraph
22 Reform Act of 1987 are qualified to conduct polygraph ex-
23 aminations in accordance with applicable State law. Such
24 standards shall not be satisfied merely because an individual

1 has conducted a specific number of polygraph examinations in
2 the past.

3 “(d)(1) When conducting a polygraph examination, a
4 polygraph examiner may not ask a question during the actual
5 examination unless such a question is in writing and has been
6 reviewed with the examinee prior to such examination.

7 “(2) A polygraph examiner may not inquire into—

8 “(A) religious beliefs or affiliations;

9 “(B) racial beliefs or opinions;

10 “(C) political beliefs or affiliations;

11 “(D) sexual preferences or activities unless such
12 information regarding sexual preferences or activities is
13 required by State law or statute, or is directly job-
14 related; or

15 “(E) beliefs, affiliations, or opinions regarding
16 unions or labor organizations.

17 “(e)(1) Each prospective examinee shall be required to
18 sign a notice prior to the beginning of each polygraph exami-
19 nation that the examinee understands—

20 “(A) the limitations imposed on polygraph exam-
21 iners in subsection (d);

22 “(B) that the examinee may terminate the exami-
23 nation at any time; and

24 “(C) that the examinee has legal rights and reme-
25 dies if the polygraph examination is not conducted, or

1 the results of the examinations are not used, in accord-
2 ance with this title.

3 “(2) Each examinee shall be provided with a written
4 copy of any opinion or conclusions rendered as a result of the
5 examination upon written request by the examinee and upon
6 payment of a reasonable fee by such examinee.

7 “(f) A polygraph examiner may not, in any calendar
8 day, conduct and complete more than ten polygraph exami-
9 nations which are subject to the requirements of this title. A
10 polygraph examination subject to the limitation of this sub-
11 section shall consist of a full and complete pretest interview,
12 recording of physiological chart data, analysis of recorded
13 chart data, and post-test interview as required. The examiner
14 shall schedule not less than one hour to conduct an examina-
15 tion of an examinee as defined in this subsection.

16 “(g)(1) Each polygraph examiner shall—

17 “(A) use an instrument that records continuously,
18 visually, permanently, and simultaneously changes in
19 cardiovascular, respiratory, and electrodermal patterns
20 as minimum instrumentation standards; and

21 “(B) base an opinion of deception indicated or no
22 deception indicated upon evaluation of changes in phys-
23 iological activity or reactivity in the cardiovascular,
24 respiratory, and electrodermal patterns on the poly-
25 graph charts.

1 “(2) A polygraph examiner may use an instrument that
2 records additional physiological patterns as specified in para-
3 graph (1) and may consider such additional patterns in fur-
4 nishing an opinion.

5 “(h) All conclusions or opinions of the polygraph exam-
6 iner arising from a polygraph examination shall—

7 “(1) be in writing and based solely upon poly-
8 graph chart analysis;

9 “(2) contain no information other than admissions,
10 information, case facts, and interpretation of the chart
11 data relevant to the purpose and stated objectives of
12 the examination; and

13 “(3) contain no recommendation regarding the
14 prospective or continued employment of an examinee.

15 “(i) A polygraph examiner shall maintain all opinions,
16 reports, charts, questions, lists, and all other records relating
17 to the polygraph examination for a minimum of two years
18 after administering such examination.

19 “(j) Any polygraph examiner conducting a polygraph
20 examination shall acquire and maintain a minimum of
21 \$50,000 bonding or an equivalent amount of professional li-
22 ability insurance coverage.

23 “(k) An employer may not use voice stress analyzers,
24 psychological stress evaluators or any other similar device for
25 the purpose of detecting deception or verifying the truth of

1 statements; and, an employer may not use or cause to be
2 used any such device as described in this paragraph with any
3 employee or prospective employee interview or any recording
4 which at any time is subjected to analysis by any voice stress
5 analyzer, psychological stress evaluator, or any other similar
6 device, the results of which are reported to any employer.

7 "DISCLOSURE OF INFORMATION

8 "SEC. 203. (a) A person, other than an examinee, may
9 not disclose information obtained during a polygraph exami-
10 nation, except as provided in this section.

11 "(b) A polygraph examiner may disclose information ac-
12 quired from a polygraph examination only to—

13 "(1) another polygraph examiner in private con-
14 sultation, the examinee, or any other person or firm
15 specifically designated in writing by the examinee;

16 "(2) the employer that requested the examination;

17 "(3) a person or governmental agency that re-
18 quested the examination or others as required by due
19 process of law who obtained a warrant to obtain such
20 information in a court of competent jurisdiction; or

21 "(4) appropriately licensed and/or chartered poly-
22 graph licensing boards and/or polygraph professional
23 associations upon written request in connection with a
24 complaint filed against an examiner pursuant to a
25 grievance procedure.

1 “(c) An employer for whom a polygraph examination is
2 conducted may disclose information from the examination
3 only to a person described in subsection (b).

4 “WAIVER OF RIGHTS PROHIBITED

5 “SEC. 204. The rights and procedures provided pursu-
6 ant to this title may not be waived by contract or otherwise.
7 No polygraph examiner may request an examinee to waive
8 any such right or procedure.

9 “ADMINISTRATION

10 “SEC. 205. The Secretary shall—

11 “(1) issue such rules and regulations as may be
12 necessary or appropriate for carrying out this title; and

13 “(2) cooperate with regional, State, local, and
14 other agencies, and cooperate with and furnish techni-
15 cal assistance to employers, labor organizations, and
16 employment agencies to carry out this title.

17 “RECORDKEEPING, INVESTIGATIONS, AND ENFORCEMENT

18 “SEC. 206. (a) The Secretary shall have the power to
19 make investigations and require the keeping of records neces-
20 sary or appropriate for the administration of this title in ac-
21 cordance with the powers and procedures provided in sec-
22 tions 9 and 11.

23 “(b)(1) This Act shall be enforced in accordance with
24 the powers, remedies, and procedures provided in sections
25 11(b), 16 (except for subsection (a) thereof), and 17, and sub-
26 section (c).

1 “(2) Any act prohibited under section 201 or 202 shall
2 be deemed to be a prohibited act under section 15.

3 “(3) Amounts owing to a person as a result of a viola-
4 tion of this title shall be deemed to be unpaid minimum wages
5 or unpaid overtime compensation for purposes of sections 16
6 and 17, except that liquidated damages shall be payable only
7 in cases of willful violations of this title.

8 “(4) In any action brought to enforce this title, the court
9 shall have jurisdiction to grant such legal or equitable relief
10 as may be appropriate to carry out this title, including judg-
11 ments compelling employment, reinstatement or promotion,
12 or enforcing the liability for amounts deemed to be unpaid
13 minimum wages or unpaid overtime compensation under this
14 section.

15 “(5) Before instituting any action under this section, the
16 Secretary shall attempt—

17 “(A) to eliminate the practice or practices alleged;
18 and

19 “(B) to effect voluntary compliance with the re-
20 quirements of this title through informal methods of
21 conciliation, conference, and persuasion.

22 “(c)(1) Subject to the limitations stated in section 207,
23 any person aggrieved may bring a civil action in any court of
24 competent jurisdiction for such legal or equitable relief as will
25 effectuate the purposes of this title, except that the right of

1 any person to bring such action shall terminate on the com-
2 mencement of an action by the Secretary to enforce the right
3 of such person under this title.

4 “(2) In an action brought under paragraph (1), a person
5 shall be entitled to a trial by jury of any issue of fact in any
6 such action for recovery of amounts owing as a result of a
7 violation of this title, regardless of whether equitable relief is
8 sought by any party in such action.

9 “(d)(1) No civil action may be commenced by an individ-
10 ual under this section until sixty days after a charge alleging
11 a violation of this title has been filed with the Secretary.

12 “(2) Such a charge shall be filed—

13 “(A) within one hundred and eighty days after the
14 alleged violation occurred; or

15 “(B) in a case to which section 207 applies—

16 “(i) within three hundred days after the
17 alleged violation occurred; or

18 “(ii) within thirty days after receipt by the
19 individual of notice of termination of proceedings
20 under State law, whichever is earlier.

21 “(3) On receiving such a charge, the Secretary shall
22 promptly—

23 “(A) notify all persons named in such charge as
24 prospective defendants in the action; and

1 “(B) seek to eliminate any alleged violation by
2 informal methods of conciliation, conference, and
3 persuasion.

4 “(e)(1) Sections 6 and 10 of the Portal-to-Portal Act of
5 1947 (29 U.S.C. 255 and 259) shall apply to actions under
6 this title.

7 “(2) For the period during which the Secretary is at-
8 tempting to effect voluntary compliance with requirements of
9 this title through informal methods of conciliation, confer-
10 ence, and persuasion pursuant to subsection (b), the statute of
11 limitations as provided in section 6 of such Act shall be
12 tolled, but in no event for a period in excess of one year.

13 “EFFECT ON STATE LAW

14 “SEC. 207. (a) It is the express intent of Congress that
15 the States may regulate polygraph examinations in a manner
16 that is consistent with the standards set forth in this title.

17 “(b)(1) Any State or political subdivision thereof which
18 desires to develop and enforce standards for the use of poly-
19 graphs by employers and polygraph examiners may submit an
20 administrative plan to the Secretary at such time, in such
21 manner, and containing or accompanied by such information
22 as the Secretary may reasonably require. Such plan shall—

23 “(A) identify the State agency designated as re-
24 sponsible for administering the plan;

1 “(B) describe the standards in the administrative
2 plan governing polygraph examiners and the use of
3 polygraph examinations by employers;

4 “(C) provide assurances through a written certifi-
5 cation that such standards, and the enforcement of
6 such standards, will be at least as effective as the
7 standards set out in this Act; and

8 “(D) explain the manner in which the standards in
9 such plan will be administered and enforced by the
10 State agency to assure compliance with this Act.

11 “(2) An administrative plan meeting the requirements of
12 subsection (b)(1) shall be deemed approved by the Secretary.

13 “(3) The Secretary shall make a continuing evaluation
14 of each administrative plan which has been approved. If the
15 Secretary finds that a plan is not being administered in a
16 manner that assures substantial compliance with the stand-
17 ards of this Act, the Secretary shall notify the State or politi-
18 cal subdivision thereof which submitted such plan that ap-
19 proval of such plan is being withdrawn and, upon receipt of
20 such notice, such plan shall cease to be in effect.

21 “(4) Review of a decision of the Secretary to withdraw
22 approval of an administrative plan under this section may be
23 obtained in the United States Court of Appeals for the circuit
24 in which the State or political subdivision thereof is located

1 by filing a petition for review with such court within thirty
2 days after receipt of the notice of withdrawal of approval.

3 “(5) The prohibitions contained in sections 201 and 202
4 of this title shall not apply to any polygraph examiner or any
5 employer engaged in any business in or affecting interstate
6 commerce, or any agent or representative of such polygraph
7 examiner or employer, in any State or political subdivision
8 which has adopted an administrative plan pursuant to subsec-
9 tion (b).

10 “(c) Nothing in this title shall be construed to require
11 regulation by a State or to prohibit a State from establishing
12 a standard that prohibits an employer from—

13 “(1) taking any action against an employee or a
14 prospective employee based on the results of a poly-
15 graph examination; or


16 “(2) making an employee or prospective employee
17 submit to a polygraph examination against his or her
18 will.

19 “(d)(1) Subject to subparagraph (2), in the case of an
20 alleged violation of this title occurring in a State that has an
21 approved administrative plan regulating polygraph examina-
22 tions in a manner that is at least as stringent as the require-
23 ments of this title, or that has a standard referred to in sub-
24 paragraph (c)(2), no suit may be brought under section 206
25 sooner than sixty days after proceedings have been com-

1 menced under the State law or standard, unless such pro-
2 ceedings have been earlier terminated.

3 “(2) Such sixty-day period shall be extended to one hun-
4 dred twenty days during the first year after the effective date
5 of such State law or standard.

6 “(3) For purposes of this paragraph (d), a State proceed-
7 ing shall be deemed to have commenced at the time it is
8 deemed to have commenced under State law.

9 “(e) ~~Nothing in this title shall be construed to apply the~~
10 ~~provisions of this title to the United States Government, to~~
11 ~~any agency or agent of the United States Government, to~~
12 ~~any State governmental agency or agent of any State gov-~~
13 ~~ernmental agency, or to any law enforcement agency or~~
14 ~~agent of any law enforcement agency.~~ 

15 “DEFINITIONS

16 “SEC. 208. As used in this title—

17 “(1) the term ‘commerce’ has the meaning
18 provided by section 3(b);


19 “(2) the term ‘employer’ includes any person
20 acting directly or indirectly in the interest of an
21 employer in relation to an employee or prospective
22 employee;

23 “(3) the term ‘Secretary’ means the Secretary of
24 Labor;

1 “(4) the term ‘State’ means each of the several
2 States, the District of Columbia, the Commonwealth of
3 Puerto Rico, and any political subdivision thereof;

4 “(5) the term ‘Polygraph Examination’ means any
5 interview or examination of any employee or prospec-
6 tive employee of an employer—

7 “(A) involving the use of any polygraph, decepto-
8 graph, or any other similar device not otherwise pro-
9 hibited by this Act which is used primarily for the pur-
10 pose of detecting deception, verifying the truth of
11 statements, or any similar purpose; or



12 “(B) which is subjected to at any time to analysis
13 by any polygraph, deceptograph (GBsl), or any other
14 similar device the results of which are ever reported to
15 any employer;

16 “(6) the term ‘Polygraph Examiner’ means any
17 person who conducts a polygraph examination as de-
18 fined in paragraph (5) of this section.”.

19 EFFECTIVE DATE

20 SEC. 3. (a) Except as provided in subsection (b), this
21 Act and the amendments made by this Act shall become ef-
22 fective six months after the termination of the first legislative
23 session of each State that occurs after the date of enactment
24 of this Act.

25 (b) The Secretary of Labor shall issue such rules and
26 regulations as may be necessary or appropriate for carrying

17

- 1 out title I of the Fair Labor Standards Act of 1938 (as added
- 2 by section 2 of this Act) not later than one hundred and eighty
- 3 days after the date of enactment of this Act.

○